In the Supreme Court of the United States

OCTOBER TERM, 1943.

No.....

PENNINGTON ENGINEERING COMPANY,
Petitioner,

vs.

HOUDE ENGINEERING CORPORATION,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINIONS OF COURTS BELOW.

The first opinion of the District Court, following trial is found at page 984 of the record and its second opinion, on rehearing, at page 1187 of the record. Both are reported in 43 Fed. Supp. 698.

The findings of fact and conclusions of law of the District Court are found at pages 1201 and 1219 of the record.

The majority and dissenting opinions of the Circuit Court of Appeals are found at page 1234 of the record and are reported in 53 U. S. P. Q. 110.

JURISDICTION.

Jurisdiction is conferred by U. S. Code, Title 28, Sec. 347 and U. S. Code, Title 28, Sec. 350, the writ being applied for "within three months."

STATEMENT OF THE CASE.

The petition itself presents the more essential facts necessary to an understanding of the reasons relied upon for the allowance of the writ. However, to facilitate pos-

sible necessary consideration of the invention of the claims in suit, one of the claims is here applied to the structure, using the reference characters of sheet 1 of the patent drawing (R. 754), as follows:

37. In a hydraulic shock absorber, the combination of a piston (6) comprising a cylindrical hub (6^b) and a vane (6^a) extending therefrom; and a casing structure in which the piston is mounted comprising a part (1) having a flat surface disposed transversely to the axis of the piston hub to engage one side of the piston vane, a second part (3) having a flat surface correspondingly disposed to engage the other side of the piston vane, a third part (2) disposed between said first and second parts and having flat lateral surfaces engaging the said flat surfaces of the two other casing parts and also having a curved surface (2^a) arranged to engage the cylindrical surface of the piston hub and another curved surface (2^b) arranged to engage the outer peripheral surface of the said vane, means for securing the three said casing parts together in fixed relation (cap screws 4,4; dowel bolts 5,5 and dowel holes in parts 1, 2, 3 whose accurately formed and placed female surfaces cooperate with bolts 5,5 to accurately align parts 1, 2, 3 with their cylindrical piston-engaging surfaces concentric with the piston axis), and means (cup 9 and other casing parts) forming a liquid reservoir space (C) disposed to receive liquid leaking outward through the joints between the flat surfaces of the three said casing parts.

It may be helpful, too, to point out that the patent in suit discloses three different specific forms of construction embodying the invention of claims 27, 28 and 37. On sheet 1 of the patent drawings, the casing structure is circular and the single vane piston is eccentrically arranged to permit a vane of maximum length for the over-all diameter. The dowel securing members (35) serve the added function of mounting bolts. The construction on sheet 2 of the patent drawings differs from that on sheet 1 chiefly in having

the main valve devices (with which we are not concerned in this case) mounted in the rear casing part instead of in the front part. The instrument on sheet 3 is externally sector shaped instead of circular, the dowel members (54^a) are in the form of pins instead of bolts and the main valve devices are mounted in the piston and its shaft. The claims relied upon apply to all three constructions. At the trial, sheet 1 was chiefly referred to as a matter of convenience. The specimen shock absorber (Ex. 8), shown in the top row of the photograph on page 811 of the record is circular in form as on sheet 1 of the patent but the dowel members are in the form of pins as on sheet 3.

The passages of the patent specification more particularly pertinent to the invention of claims 27, 28 and 37 are as follows:

Page 1, column 1, line 21, object (c);

Page 1, column 2, line 49 to page 3, column 1, line 19; and

Page 3, column 2, line 17 to line 43, describing construction;

Page 6, column 2, lines 32 to 41;

Page 7, column 1, line 37 to column 2, line 62, describing method and means of manufacture of the described construction to secure accuracy of form and of alignment of parts at low cost;

Page 14, column 1, lines 44 to 49, as to scope of invention.

SPECIFICATION OF ERRORS.

The statement in the petition under the heading "Questions Presented" may be taken as petitioner's specification of errors.

ARGUMENT.

At the outset, we direct attention to the unusual history of this case in the courts below.

In the District Court after full and lengthy trial and exhaustive argument the court found that the patent claims in suit were valid and infringed and also that the defendant unlawfully appropriated and used to its own advantage disclosures made to it in confidence by the plaintiff prior to the issuance of the patent. Yet upon supplemental petition by respondent and hearing thereon, the court reversed itself in almost every particular, reading extreme limitation into the claims, holding them not infringed and acquitting the defendant of the breach of confidence. And this striking reversal was based essentially upon the patent to Sutton No. 1,341,395 which, properly considered as evidence, is merely cumulative (over Taylor patent 1,438,507), admittedly does not anticipate and, furthermore, discloses a device wholly lacking in utility.

In the Circuit Court of Appeals the majority judges have affirmed the last position of the District Court and, on the other hand, the dissenting judge has characterized the prior art essentially relied upon by the trial judge and the majority judges of the Circuit Court of Appeals as a "futile suggestion," and the invention of the patent in suit as "revolutionary."

We turn now to the reasons assigned for the grant of the writ.

The First Reason.

The fundamental patent law controlling the construction of patent claims and the determination of infringement is clearly established in the decisions of this Court and the conforming decisions of the Circuit Courts of Appeals.

In *Eibel Process Co.*, 261 U. S. 45, 63, this Court said:

> "In administering the patent law the court first looks into the art to find what the real merit of the alleged discovery or invention is and whether it has advanced the art substantially. If it has done so, then the court is liberal in its construction of the patent to secure to the inventor the reward he deserves."

The majority judges of the Circuit Court of Appeals failed to follow this direction. In particular, while they recognized that the invention sought to be covered in the claims in suit, e.g. claim 37, is a combination of elements and that the combination is novel, their opinion makes no mention of the exceptionally clear and convincing evidence of the prior art showing a serious problem of long standing, numerous unsuccessful efforts of the skilled prior art workers (including respondent) to solve the problem and Pennington's successful solution of it. This purely objective evidence is the best possible evidence on "what the real merit of the alleged discovery or invention is and whether it has advanced the art substantially"; yet, as far as can be determined from their opinion which makes no mention of this evidence, the majority judges either disregarded it or failed to give it due weight. The exceptional nature of the evidence is indicated by Judge Hand's characterization in his dissenting opinion (R. 1244) and we therefore only note here the places in the record where the evidence is to be found, to-wit: a brief statement of the problem (R. 104-105); the predominant type of prior art construction from 1914 to 1931, illustrated by Houdaille patent 1,087,017 (R. 817) and Shultz patent 1,627,810 (R. 905); unsuccessful efforts by inventors outside respondent's organization represented by patents as follows: Taylor 1,438,507 (R. 825), Flentje 1,521,218 (R. 829), Johnson 1,578,319 (R. 836), Thayer 1,883,436 (R. 846), compare Thayer 1,936,695 (R. 897) lines 84 to 105, page 1 and lines 69 to 78, page 2; unsuccessful efforts by respondent's

skilled workers including: automatic machine tool for forming the abutment slots in the inner side wall of the cup part (Peo testimony R. 367), then, following the contract with Ford in 1927, the "fussy" caulking of the abutment joints (Fishleigh testimony R. 132-141 and drawing, R. 806), Houdaille patent 1,843,603 (page 2, column 1) showing effort to avoid caulking (R. 865); additional unsuccessful efforts (after 1927) by respondent shown in Ex. F (R. 913) including: Fig. 2 showing use of "joint pins" which failed for reasons stated by Peo (R. 427, 428), Fig. 3 showing separate abutments electrically welded in cup, Fig. 4 showing abutments integral with side wall but requiring unsuccessful "joint pins"; unsuccessful efforts of respondent, beginning in 1927, toward the accused ring wing type of construction including first proposal of idea in 1927 (R. 343, 349-350, 454), molded bakelite ring wing (R. 914) and Fox patent 1,909,943 (R. 882) which were unsuccessful because the bakelite parts could not be molded with required accuracy (R. 455), finally, just prior to the confidential disclosure of the Pennington invention, the zinc alloy die-cast ring wing model of Ex. N (R. 916) which failed because of both inaccuracy and destructive electrolytic action (R. 429, 430).

The majority judges failed in another respect to carry out the direction of the *Eibel* case. Although they characterize the invention as a "new combination of old elements" (R. 1244), they seem (quite properly) to recognize that the securing means element of claim 37 of Pennington performs a peculiar double function. To use their language (R. 1239), "He—(Pennington)—saw that what was needed was a method of assembly that would guide the parts into their ~~relative~~ proper position as they were put together," (i.e. effect their axial alignment) "and hold them there." Had the majority judges looked into the prior art as required by the direction of the *Eibel* case they would have found that it was broadly new to provide a three-part work-

ing chamber structure with such a double-function securing means, that the patentee was entitled to a correspondingly broad range of equivalents in the construction of claim 37 and that there was, therefore, no justification in the prior art for limiting the securing means of the claim to the specific form (dowel pins or bolts, and screws) shown and described in the patent.

Numerous decisions both of this Court and of the various circuit courts of appeals are to the same effect as the above quoted direction of the *Eibel* case. Examples are: in this Court, *Keystone Mfg. Co. v. Adams,* 151 U. S. 139, 144-145, *Smith v. Snow,* 294 U. S. 1, 14; in the second circuit, *Tompkins-Hawley-Fuller Co. v. Holden,* 273 F. 424, 430, *Fowler & Wolfe Mfg. Co. v. McCrum-Howell Co.,* 215 F. 905, 909-910 and *Schick Dry Shaver, Inc. v. R. H. Macy & Co., Inc.,* 111 F. (2d) 1018, 1022; in the first circuit, *Mossberg v. Nutter,* 135 F. 95, 99; in the sixth circuit, *Sun Ray Gas Corp. v. Bellows-Claude Neon Co.,* 49 F. (2d) 886, 888; in the ninth circuit, *Smith Cannery Machines Co. v. Seattle-Astoria Iron Works,* 261 F. 85, 88.

It is well settled law that when certain claims of a patent include an express limitation and other comparable claims do not do so the latter claims should not have those limitations read into them. *Smith v. Snow,* 294 U. S. 1, 13-14, and *Symington Co. v. National Malleable Castings Co.,* 250 U. S. 383, 385. To the same effect are *Lamson Consolidated Store Service Co. v. Hillman,* 123 F. 416, 419 (C. C. A. 7th) and *Wm. B. Scaife & Sons Co. v. Falls City Woolen Mills,* 209 F. 210, 214 (C. C. A. 6th). Here, in claim 37 in suit the securing means element of the combination is broadly defined while in claim 4 of the patent the same element is specifically limited to "a plurality of dowel members engaging the rear, front and intermediate casing parts"; and claims 6, 7, 8, 9 and 10 have similar limitations.

Therefore, when the majority judges of the Court of Appeals limit the securing means of claim 37 to the specific form illustrated in the patent they are in direct conflict with the above cited rulings of this Court. That they have so limited the claims in suit is shown by the statement (R. 1242): "Because of this difference in anchorage requirements the defendant did not use, or need to use, *the more elaborate combination of dowel bolts and cap screws which hold together the casing members of the plaintiff.*" (Emphasis added). It is evident from the opening sentences of Judge Hand's dissenting opinion (R. 1244) that he so construes the majority opinion.

In this connection it is to be borne in mind that claims are to be read in the light of the specification, not to restrict the invention to the precise structure disclosed, but to grasp the invention in order properly to measure the range of equivalents. *Flowers v. Magor Car Corp.*, 65 F. (2d) 657, 658 (C. C. A. 3).

The majority judges of the Circuit Court of Appeals clearly recognize that the Pennington invention is a combination of mechanical elements and that the combination is novel. Yet, in construing the claims, they have failed to conform to a fundamental principle of patent law relative to combination claims that was early established by this Court. In *Imhaeuser v. Buerk*, 101 U. S. 647, 660, the court said:

> "Where the thing patented is an entirety, consisting of a single device or combination of old elements incapable of division or separate use, the respondent cannot escape the charge of infringement by alleging or proving that a part of the entire invention is found in one prior patent, printed publication, or machine, and another part in another prior exhibit, and still another part in a third exhibit, and from the three or any greater number of such exhibits draw the conclusion that the patentee is not the original and first inventor of the patented improvement. *Bates v. Coe*, 98 U. S. 31, 48."

Accordingly, the majority judges are in direct conflict with the long-established authority of this Court when they undertake to limit the Pennington invention by reason of the fact that elements thereof are to be found in the prior art or, what amounts to the same thing, that the respondent's specific forms of those elements are to be found in the prior art. The most glaring example of this is the treatment in the majority opinion of Pennington's intermediate casing member with integral abutment and the corresponding "ring wing" part of the accused construction. The opinion (R. 1243) says: "Perhaps that ring was a fair equivalent of Pennington's abutment bearing middle casing member, but however that may be it was old to use a casing member with integral abutments in such hydraulic shock absorbers. Sutton showed that in his patent No. 1,341,395, granted May 25, 1920." Passing, for the moment, the vital error of fact in this statement, it is apparent that its purpose is to limit, if not destroy, the Pennington invention by finding the elements, as such, in the prior art, overlooking the fact that the gist of the invention is in the novel combination, and overlooking, too, the extraordinary objective evidence showing invention and advance of the art by Pennington.

The error of fact in the statement last quoted is that the Sutton device does not show "use" of the intermediate casing member because the device is wholly *useless* for any practical purpose, in that it lacks means for positioning and securing the three casing parts in fixed operative relation (axial alignment) to each other with the degree of accuracy admittedly essential.

Second Reason.

The majority opinion of the Circuit Court of Appeals undertakes to justify the limitation of the claims to Pennington's specific dowel devices upon the ground that his invention is essentially limited to the single vane type of

construction. *Their ruling of non-infringement rests essentially upon that proposition.*

The truth of this last statement is shown by several passages in the majority opinion. Thus, it is stated (R. 1235) that "the defendant has always used that type of piston (double vane) and did so in building the accused devices. That fact is of the greatest significance on the question of infringement as will later be seen."

Again, on the same page, referring to the Pennington invention, the majority opinion says: "He also had to face certain manufacturing difficulties which one making the double-vane piston type of the defendant did not encounter. * * * it is in the overcoming of them that the patentee displayed invention, if he did at all, and unless the defendant made use of those features there is no infringement." This last statement is iterated at the top of page 1237.

Finally comes the important statement, following the first full paragraph on page 1242, which definitely ties together the two limitations to the single vane and the dowel securing means.

This limitation of the Pennington invention to the single vane construction is clearly contrary to the evidence and, without justification, sets aside the District Court's finding No. 18 (R. 1220) in breach of Rule 52 F. R. C. P.

As to the evidence, it will be noted that the claims in suit contain no limitation, express or implied, to single vane construction. Nevertheless respondent's expert in testifying contended that plaintiff's invention is so limited. He could offer no reason based upon the inherent nature of the patented construction but contended (R. 533-535) that his position was sustained by the fact that the Pennington specification pointed out certain advantages flowing from an eccentric single vane construction. *Contra*, petitioner's expert testified that there is no essential connection between this latter feature and the subject matter

of the claims in suit and was able to support that proposition by the fact that the eccentric single vane feature is independently claimed in claim 11. The contention of respondent's expert was further weakened when he was interrogated by the trial judge (R. 557) and *conceded that Pennington's specific type of construction is applicable to the double vane instrument.* This was independently corroborated by Pennington's testimony under cross examination (R. 57) that petitioner, prior to the January 1931 meeting, had drawn up a double vane embodiment of its invention. Correspondingly, respondent's reissue patent to Peo, No. 19,631 (R. 872) shows conclusively that respondent's specific type of construction is applicable to both double vane and single vane constructions. Compare Figs. 11 and 14 (R. 875). Confronted with all of this evidence respondent's counsel in one of their briefs brought forth the assertion that the official actions by the examiner in charge of Pennington's application showed that he considered the invention limited to the single vane. This evidently was a desperate "shot in the dark" because the application record, when examined, established the exact reverse of respondent's assertion.

The trial judge summarized most of the foregoing evidence in his opinion of January 21, 1941 (R. 991-992), but did not include in his summary a further highly important item of evidence, to-wit: Respondent had struggled for many years prior to 1931 with the difficulties incident to the separate abutments of its prior construction, and following 1927, when it secured the very large Ford business, it was under especially heavy pressure to solve the problem and made a number of efforts which admittedly were unsuccessful. It was fresh from the last of these failures when on January 19, 1931, its experts received a full disclosure of the Pennington shock absorber construction and the Pennington production methods. Then, within approximately 90 days, respondent started commercial

production of the accused construction. The design by respondent of the accused model must have come promptly following the January meeting with Pennington, considering the time required for the designing of the new construction, the novel broaching tools and the necessary jigs and fixtures and for the making of these tools and devices. Considering all the facts, the conclusion is inescapable that respondent found in the Pennington *single vane* device the solution of the problem with which it had been for years unsuccessfully struggling in its *double vane* construction.

In the majority opinion of the Circuit Court of Appeals there is no reference to the evidence outlined above or to the formal finding of the District Court based upon it. We submit that if the majority judges gave this evidence and finding due consideration and intended to set the finding aside it was incumbent upon them under Rule 52 F. R. C. P. to show that the finding is "clearly erroneous." This they failed to do and their action, we submit, calls for the application of this Court's power of supervision.

The situation would be different if the distinction which the majority judges draw from the difference between the double vane and single vane designs were supported by any substantial evidence. But their distinction is based essentially upon the mere fact (well understood by engineers in this field) that the hydraulic forces are balanced with respect to the axis in the double vane type and unbalanced in the single vane type. This point was brought out by respondent's expert witness Brush (R. 528). He, however, made no such deduction from it as do the majority judges, for as an engineer he understood, what the majority judges overlooked, namely, the fact that in both the single vane and the double vane constructions there are unbalanced mechanical forces which are exteriorly applied to the casing members through the vane shaft and its bearings when road bumps are encountered, and the securing means must

therefore be rugged and strong in both cases. Furthermore there is no difficulty in either case in attaining the requisite *strength* of the main casing parts. The chief difficulty overcome by Pennington (and by Houde) was the production of securing means capable of *accurately positioning* the casing parts relative to each other.

We believe the majority judges might have reached a quite different conclusion had they more carefully considered the essential functions performed by the Pennington absorber and particularly by the *securing means* of the combination. Pennington's securing means are cap screws 4 and dowel devices which, on sheet 1 of the patent drawing, consist of dowel bolts (dowel pins instead of bolts are used in the sheet 3 construction) and holes in the three casing parts with dowel surfaces accurately formed to fit the dowel bolts snugly and accurately located in relation to the working axis of the instrument so that when the parts are assembled all three of said dowel surfaces are brought into accurate alignment and the three casing parts are secured together in fixed coaxial relation. The cap screws engage threads on the rear wall part and serve essentially to clamp the parts together in the direction of the axis of the instrument while the dowel bolts or pins, in addition to positioning the casing parts in axial alignment, serve essentially to secure the three casing parts against displacement either rotationally or laterally in relation to the axis. As has been stated, the double function (of the securing means) of (a) accurately positioning the casing parts in axial alignment and (b) there holding them was broadly new with Pennington.

Similarly, respondent's securing means consist of a threaded clamping ring and dowel devices comprising dowel surfaces formed, respectively, on the inner side of the rear casing member flange, the outer periphery of the intermediate ring wing and the outer periphery of the front casing member, all three of these surfaces being ac-

curately located relative to the working axis of the absorber, and the two peripheral surfaces having a dowel fit with the inner surface on the rear wall member so that when the three casing parts are assembled their three dowel surfaces are brought into accurate mutual alignment just as in the case of the dowel surfaces on petitioner's three casing parts, with the result that in both cases the interior cylindrical surfaces of the intermediate member of the casing are brought into accurate axial alignment with the shaft bearings of the two other casing members. The dowel devices of respondent also include two ordinary dowel pins fitting dowel holes in the three casing members and holding them against relative rotation.

Thus the novel double function of the Pennington securing means is performed in petitioner's and respondent's absorbers by similar parts that operate in substantially the same manner. That is, in both cases screw threaded means engaging the rear and front casing parts draw those two parts together and clamp the intermediate part between them, and dowel surfaces accurately preformed and located on each of the three casing parts serve, when the parts are assembled, to axially align those parts and hold them against relative displacement laterally of the axis.

The absorbers of both petitioner and respondent presented the very difficult problem of forming the intermediate casing part with a dowel surface accurately located in relation to a working axis determined by the shaft bearings formed on the entirely separate rear and front casing members. Pennington accomplished this by the use of an "assembly plug," as described in his patent (R. 763, second column), and respondent applied the identical principle of this device in what Peo termed a "very accurate and very costly arbor" (R. 393, last half). Obviously Peo's "arbor" was used to accurately position the ring wing in relation to the axis of the turning lathe (equivalent to

the working axis of the shock absorber in the concentric double vane construction) while the dowel surface was being accurately formed and located on the periphery of the ring wing. The exact concentricity thus secured of this peripheral (male) dowel surface with the interior cylindrical surfaces of the ring wing is quite as essential as is the exact location of Pennington's dowel hole surfaces in relation to the interior cylindrical surfaces of his intermediate casing part. We believe that the relationships pointed out in this paragraph were not understood by the majority judges. Indeed this is clear from a consideration of their discussion of the accused construction at the top of page 1243 of the record and in the first full paragraph of that page. Their comment shows that they thought the only requirement for the assembly of respondent's ring wing was that it should have an outer diameter to fit inside the flange of the cup member.

We submit, therefore, that the majority judges not only improperly set aside the abundantly supported finding of the District Court but put in its place, as the essential basis of their ruling of non-infringement, their own quite erroneous theory of the nature of the respondent's device.

Third Reason.

On page 1241 of the record the majority opinion of the Circuit Court states: "The application for the patent in suit was pending before the defendant was approached concerning the Pennington shock absorber and there is no claim that more was disclosed in confidence to the defendant than was included in the specifications in the application for that patent." And the opinion closes (R. 1244) with the statement: "As the defendant did not infringe, the cause of action based on the allegations as to the confidential submission of the invention was not made out. *Picard v. United Aircraft Corp.*, 128 F. (2d) 632; *Rosen-*

thal v. Celanese Corp. of America, decided May 4th, C. C. A. 2." These two quotations are the only statements in the majority opinion indicating the position of the majority judges relative to the issue of breach of confidence.

We must assume that the majority judges took account of the evidence showing that the confidential disclosure by Pennington to representatives of respondent included, in addition to the subject matter of the claims in suit, petitioner's methods of manufacture which were novel with petitioner. This novelty resided in the demonstration by Pennington that it was feasible to broach the interior surfaces of the intermediate casing member with the requisite degree of accuracy (contrary to the beliefs of the broaching experts consulted by Pennington in advance, R. 72) and also resided in the highly important "assembly plug" method of producing securing means for the three main casing parts capable of both accurately axially aligning those parts and fixedly securing them in such alignment.

We must assume also that the majority judges duly considered the testimony of respondent's chief witness Peo that the latter machined the interior surfaces of its ring wing by broaching, as in the Pennington method, and that it formed the aligning dowel surface on the periphery of the ring wing by the use of a "very accurate and very costly arbor" which operated on the same principle as Pennington's assembly plug and was the effective equivalent thereof (R. 393). We must also assume that the majority judges considered in this connection the fact that it is the facility with which the ring wing of respondent can be machined on its "arbor" that is referred to in respondent's Peo reissue application in urging patentability of the ring wing construction (R. 420, 421). See reissue claims 4, 5, 6 (R. 880).

Both of the above noted novel method features of petitioner which were disclosed in confidence to respondent are disclosed in the specification of the patent in suit but

they are not covered by the patent claims. When the majority judges ruled those claims not infringed, that ruling did not justify the further ruling quoted above from page 1244 of the record. Indeed, the latter ruling is in radical conflict with the established law that the creator of any novel and useful method or product is entitled to be protected in the use thereof as against others without license to whom it may be disclosed in confidence; and this is true whether or not the subject matter in question is patented or susceptible of being patented. *Becher v. Contoure Laboratories,* 279 U. S. 388, 391; *Dupont v. Masland,* 244 U. S. 100, 102; *Board of Trade v. Christie Grain & Stock Co.,* 198 U. S. 236, 250.

The majority opinion cites *Picard v. United Aircraft Corporation,* 128 F. (2d) 632, in support of its ruling. If the latter decision did support the ruling, then clearly it would be in conflict with the three decisions of this Court last quoted above; but we submit that the opinion in the *Picard* case (see page 637) is quite clearly in full accord with those decisions of this Court and does not support the ruling of the majority opinion.

The case of *Rosenthal v. Celanese Corporation of America,* now reported in 77 U. S. P. Q. 291, is readily distinguished from the facts of this case. Whereas in the *Rosenthal* case the patent showing the matter disclosed in confidence was applied for after the confidential disclosure, in this case the disclosure in the patent application preceded the confidential disclosure; and whereas in the *Rosenthal* case the fact of the confidential disclosure was in doubt, here the confidential disclosure of applicant's methods of manufacture is not questioned. The position of the District Court is shown by original finding 10 (R. 1204) and conclusions 5 and 6 (R. 1206) but its final position is represented by supplemental finding 14 (R. 1219), made on plaintiff's motion. The *Rosenthal* case lends no support to the ruling here.

We submit that the ruling of the majority opinion is in conflict with the applicable law and on this branch of the case, also, this Court should intervene. It is not too much to say that petitioner's novel broaching and aligning methods of manufacture confidentially disclosed to respondent are comparable in importance to the improved shock absorber construction itself; and the erroneous ruling by the Court of Appeals is correspondingly serious.

CONCLUSION.

In conclusion it is submitted that the majority opinion, in its rulings on both branches of this case, so seriously conflicts with the applicable law established by decisions of this Court and the various Circuit Courts of Appeals and is so far contrary to the evidence and the finding of the District Court erroneously set aside by the Circuit Court of Appeals as to clearly warrant the granting of this petition and the review by this Court of the judgment of the court below.

Respectfully submitted,

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